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SUMMARY RECORD OF THE 1422nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 July 1995, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

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GE.95-17548 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Latvia (CCPR/C/81/Add.1/Rev.1) (continued)

1. Mr. FRANCIS said it would appear that there was an element of inequality between men and women in that a female child born abroad of an unmarried Latvian mother and a non-Latvian father would, on the mother's return to Latvia, be without Latvian citizenship on the ground that the birth was not founded in citizenship, whereas if the child were a male, that would not be the case; it was a matter the Latvian authorities should examine.

2. Paragraph 23 of the report referred to the possible establishment of a system of administrative courts in which administrative judges would be able to function at the lower or first instance stages with regard to matters of lesser importance; paragraphs 34 and 58 referred to legislation being prepared on the introduction of the office of Ombudsman, with precise functions and powers to be determined. Since an administrative court system would be slow and very costly for those with grievances to be redressed, he wondered whether consideration had been given to an arrangement whereby the Ombudsman would exercise his functions and powers independently but be directly accountable to Parliament through the State Minister on Human Rights; that would be a relatively swift and inexpensive way of correcting administrative injustices.

3. Paragraph 35 of the report referred to the process of improving the legal and court system. He wondered whether it would not be more effective to pursue that exercise through the establishment of a law reform agency, rather than by ad hoc amendments and preparation of new legislation on the initiative of the respective ministries.

4. Paragraphs 68-71 showed that women were at a serious disadvantage in Latvia with regard to employment; they constituted more than half the country's population, yet fewer than half of them were employed. Had consideration been given to the establishment of a government bureau of women's affairs with a mandate to formulate policy objectives and monitor their implementation so as to enhance both opportunities for women to participate in public affairs and equality of employment.

5. In the light of information from the International Commission of Jurists, he would welcome further information from the Latvian delegation regarding the recent refugee train shuttle episode.

6. Mr. LALLAH, noting that the task of bringing Latvian legislation into conformity with the requirements of the European Convention on Human Rights had been assigned to a governmental working group in April 1995, asked whether similar action was to be taken with regard to the Covenant. There was a danger of becoming too Eurocentric in matters of human rights: for example, the Covenant was quite different from the European Convention in its treatment of the question of national minorities. There was also a danger of misreading

the Covenant: paragraph 7 of the report stated that article 8 of the Declaration on the renewal of Latvian independence guaranteed to the "citizens of the Republic of Latvia, and those of other nations permanently residing in Latvia, social, economic and cultural rights, etc.", whereas the Covenant, in article 2, paragraph 1, referred not to "citizens" but to all individuals within the territory of a State party and subject to its jurisdiction.

7. He was also unclear about the legal status of the Constitutional Law, on the Rights and Obligations of a Citizen and a Person of 10 December 1991 and wondered whether it had the same force as the Constitution of 15 February 1922, which had been restored in 1993.

8. He further asked whether the prosecutor, referred to in paragraphs 18 and 19 of the report, worked for the State or for citizens. What were a citizen's rights of access to independent lawyers, and how was the legal profession organized in Latvia? There was a need for urgent and serious measures to ensure that citizens whose rights were affected had access to the legal profession without which the rights conferred in the Covenant had no meaning. More information was needed about that procedure and its cost. He commended a serious reading of the Covenant, because in his view article 26 had been misunderstood: it referred not merely to procedural but to substantive equality. There must be no discrimination in the application of the law or in the law itself. It was unclear to him what recourse was available to people in Latvia if their rights under the Covenant were violated. There was the Constitutional Court, but more information was needed on the operation and effectiveness of the procedures referred to in paragraphs 41-45 of the report.

9. Mr. BHAGWATI said the report gave a very broad and general picture, but little detail of the practical situation. He wondered to what extent the rights conferred under the Declaration on Human Rights and the Constitutional Law of 10 December 1991 were actually enforced, and whether there had been any cases of those rights being claimed by citizens or non-citizens in Latvia. Had Latvia actually acceded to all the international instruments referred to in paragraph 4 of the report and undertaken the respective obligations?

10. Paragraph 7 of the report stated that article 1 of the Declaration of 4 May 1990 on the renewal of Latvian independence had established the supremacy of the fundamental principles of international law over national law. He wondered whether that meant that the provisions of the various international instruments, and in particular the Covenant, had been incorporated into the domestic law of Latvia by that article. If so, he would like to know the place occupied by the Constitutional Law of 10 December 1991 in the legal system of Latvia in relation to the Covenant, and whether a citizen was entitled to enforce the rights conferred under the Covenant as well as those conferred under the Constitutional Law, there being no exact correspondence between the two.

11. He also inquired to which body an individual should apply to bring legal proceedings; paragraph 41 of the report stated that an individual who claimed that any of his rights had been violated might apply directly to

"the court", - but which court, and under what circumstances? If there was inconsistency between the provisions of the Covenant or the Constitutional Law of 10 December 1991 and other legislation, which would prevail, and would the courts have jurisdiction to declare the inconsistent law null and void? Paragraph 52 of the report referred to inconsistency of "administrative enactment", and not legislative enactment.

12. Noting that paragraph 41 referred to "an independent judicial power", he asked what measures Latvia had taken to secure the independence of the judiciary. In that connection, he commended the adoption of the Basic Principles on the Independence of the Judiciary.

13. Paragraph 43 (c) stated that the Supreme Court consisted - partly - of the Senate as a court of cassation. In that connection, he asked who were the relevant members of the Senate and whether the Supreme Court was an exclusively judicial body. If it was a political body, that would give rise to serious concern. Furthermore, if there was to be a Supreme Court and a Constitutional Court, how were their respective jurisdictions to be delimited?

14. He also inquired whether the State Minister on Human Rights had initiated any programmes to create awareness among the public regarding human rights, and whether there were any human rights courses in schools or universities. Did the Latvian authorities anticipate any overlap in functions between the State Minister on Human Rights and the recently established Human Rights Council?

15. He shared the concerns of other members regarding the death penalty in Latvia: some offences for which it was provided under Latvian law were not "most serious crimes" within the meaning of article 6 of the Covenant.

16. Paragraph 84 of the report stated that the power of authorizing detention was left to the prosecutor, but during its presentation the delegation of Latvia had stated that, under an amendment to the law of October 1994, that power had now been given to a judge. What exactly was the situation in that respect?

17. A report by Human Rights Watch stated that, because of a resolution on the renewal of citizenship of 15 October 1991, some 700,000 individuals - most of them Russian-speakers who had migrated to Latvia after 1940 - would in effect become stateless persons. He wondered how many of them would be covered by the changes made by the Law on Citizenship of 11 August 1994. The refugee train shuttle episode was of particular concern and, like Mr. Francis, he wished to draw the attention of the delegation of Latvia to the statement issued by the International Commission of Jurists on that matter. The necessary measures should be taken to adopt a refugee policy that was in conformity with generally applicable human rights standards.

18. Ms. Birzniece, Ms. Kalniete, Mr. Levits, Ms. Dobraja and Ms. Jakobsone (Latvia) withdrew.

The meeting was suspended at 10.25 a.m. and resumed at 10.40 a.m.

19. The CHAIRMAN informed the Committee that one of its members, Mrs. Rosalyn Higgins, had been elected a judge of the International Court of Justice. She was the first woman to be so appointed. He was sure that members of the Committee would join him in congratulating Mrs. Higgins, to whom he proposed to send a fax later that day.

Consideration of a draft general comment relating to article 25 of the Covenant

20. Ms. EVATT said the Committee had before it document CCPR/C/53/CRP.1, which contained a draft general comment on article 25 that the Committee had begun to discuss at its fifty-third session. It also had before it the text of revised paragraphs 1, 2, 4 and 5 that incorporated changes agreed on at the fifty-third session and of proposed new paragraphs 3, 3 (b) and 10 which she herself had drafted in the light of the discussion at the 1399th and 1414th meetings.

21. Introducing her proposed new text, which she invited the Committee to consider, she said it was intended to deal with the whole range of issues raised by article 25, including who qualified for the exercise of rights under that article and specific reasons which might result in deprivation of or exclusion from those rights. Article 25 was limited to the rights of "every citizen". No distinctions were permissible between those entitled to citizenship by birth and those who acquired it by other means. Some individuals might have access to the rights concerned by virtue of residence.

22. Mr. KRETZMER suggested that in the last sentence of the proposed new paragraph 3 the words "of non-citizens" should be inserted after the words "any groups".

23. Mr. KLEIN asked whether the prohibition of distinctions listed in the third sentence of the new paragraph 3 related only to citizens or was meant in a broader sense. He wondered whether no distinctions were permitted between citizens, as in the proposed new paragraph 10, or whether it would exclude the granting of voting rights to some non-citizens but not to others.

24. Mrs. CHANET said she shared Mr. Klein's concern regarding the ambiguity of the third sentence of paragraph 3. There were distinctions between persons entitled to citizenship by birth and those who acquired it by naturalization, but they were not necessarily discriminatory inasmuch as they were not contrary to article 25, or indeed to articles 26 or 2 of the Covenant. What was not compatible with article 25 was to make distinctions between the rights laid down in the article itself. Article 25 did not cover access to citizenship; it recognized rights once a person had become a citizen, and access to citizenship was dealt with elsewhere in the Covenant. Specific rights of citizens, access to citizenship and rights which should be given to all persons on an equal basis irrespective of how they acquired their nationality should not be mixed. A number of ideas had been blended together and the various categories should be separated.

25. Ms. MEDINA QUIROGA said that there was some discrepancy between the Spanish and English texts with regard to the distinction between citizenship

acquired by birth and that acquired by naturalization. She suggested that the English text might be altered to bring their meanings closer together. The phrase might read, for example, "those who are entitled to citizenship by birth and those by origin citizens". In her view, the phrase "by birth" failed to adequately convey the idea.

26. Mr. BÁN said that in his view the draft was generally speaking very good. He was concerned, however, that the comment placed too much emphasis on the obligations of States parties.

27. More specifically, with regard to paragraph 3, second sentence, he wholly agreed that the issue of the acquisition of citizenship was outside the scope of article 25. Furthermore, the requirement that State reports should provide detailed descriptions of citizenship legislation would prove time-consuming and cumbersome. He proposed that the text should be made more flexible so as to read, for example, "State reports should describe the provisions of citizenship legislation to the extent necessary to assess the enjoyment of rights under article 25".

28. With regard to paragraph 3 (b), first sentence, in his view the notion of deprivation of rights was a more serious matter than that of exclusion from the exercise of rights. He therefore suggested that the order of those two clauses should be reversed.

29. Mr. EL SHAFEI said that the question of deprivation of citizenship, which had been included in the working paper, did not figure in Ms. Evatt's draft: it should properly appear in paragraph 3 or paragraph 3 (b). Furthermore, paragraph 3 (b), second sentence, should be revised to read: "Any conditions which apply to the non-exercise of these rights", or the "exclusion from these rights", or the "deprivation of these rights".

30. Mr. BRUNI CELLI asserted, with reference to paragraph 3, fourth sentence, that for historical and sociological reasons, many countries of the world established a distinction between those who acquired citizenship by birth and those who acquired it by naturalization. The great majority of Latin American countries in fact did so. In Mexico, a number of the entitlements associated with citizenship by birth, such as those related to certain public functions, were denied to children of foreigners up to the third generation. The text as it stood was surely swimming against the tide of established practice. In his view, that sentence would significantly limit the usefulness of comment.

31. He noted that a phrase that had originally figured in paragraph 10 had been placed at the end of paragraph 3 (b). It asserted that deprivation of the right to vote should not exceed the period of detention. Since, however, there were many kinds of sentences, including release on bail, which could last longer than a term of imprisonment, the phrase "the period of detention" should be modified to read "the period of the duration of the sentence".

32. Mr. BHAGWATI said that he fully agreed with the remarks of Mr. Bruni Celli with regard to paragraph 3 (b). Individuals could indeed be released on bail during the course of their sentence, pending appeal.

33. The first sentence of paragraph 3 (b) should be revised to read, "No one should be ... deprived of these rights except under law or on arbitrary or unreasonable grounds ...". Attempts were often, for example, made to deprive persons of their civic rights without the observance of due process of law. In a case occurring in Sri Lanka, an individual had been deprived of her rights by a parliamentary resolution.

34. The first clause of paragraph 3, second sentence, which read, "State reports should describe the legal provisions which define citizenship" should be retained, while the second clause should be deleted; it was understood that all citizens were entitled to the rights stipulated by article 25.

35. Mrs. CHANET endorsed the view of Mr. Bruni Celli that the deprivation of the right to vote should be linked not to the term of detention but to the length of the sentence.

36. Ms. MEDINA QUIROGA said that she disagreed with Mr. Bruni Celli's views concerning paragraph 3. The Committee should not allow itself to be swayed by majority practice or opinion, as it had so pointedly cautioned Ukraine in recent days.

37. With regard to paragraph 3 (b), she agreed that the phrase "period of detention" should be altered. Furthermore, that paragraph spoke of exclusion from the exercise of rights, and about the deprivation of rights as the consequence of a sentence, but it did not mention the suspension of rights. In many Latin American countries, for instance, from the moment that a suspect in a criminal case was formally charged, his right to vote was suspended; such cases could drag on for years. That practice surely contravened the principles of the Covenant, and should be referred to in the comment.

38. Mr. MAVROMMATIS said that, in paragraph 3, the phrase "by birth" should be understood to have broad implications; some persons were citizens by birth, for instance, despite having been born abroad. He acknowledged that a distinction between citizenship by birth and by naturalization was set out in the legislation of most Latin American countries, but in other countries of the world, the rejection of that distinction was a cornerstone of human rights protection.

39. He agreed that the final sentence of paragraph 3 (b) should be modified. In Cyprus, sentencing entailed no additional civil deprivation; however, he understood the thinking of those countries which followed that practice. Occasions might sometimes arise in which a minor sentence, such as for an electoral misdemeanour or crime, could entail a much longer period of deprivation. He therefore suggested that the phrase should read: "the period of deprivation should be proportionate to the sentence imposed". It should also be pointed out, however, that limiting the period of deprivation to the period of imprisonment also limited a country's discretion in that matter.

40. Mr. BUERGENTHAL said that, as a naturalized citizen, he was unhappy about the distinction drawn between citizens by birth and naturalized citizens. As a compromise, it might be useful to insert the words "in principle" at the start of paragraph 3, fourth sentence.

41. In his view, Ms. Medina Quiroga's concern might be met by the use of the phrase "by birth or by descent".

42. Lastly, Mr. Mavrommatis' suggested revision of the final sentence of paragraph 3 (b), or some other wording conveying that general meaning, was worth considering.

43. The CHAIRMAN observed that only Costa Ricans born in the country were permitted to hold the office of President; he profoundly hoped that legislation would be repealed. He also recalled that, when the Committee had discussed the report of Mexico, it had found that the provisions of the Mexican Constitution concerning the entitlements of citizenship by birth contravened the terms of the Covenant.

44. He would not object to Mr. Buergenthal's suggested addition to paragraph 3, fourth sentence; he could not accept the sentence as currently worded. The final sentence of paragraph 3 (b) cited the right to vote but did not mention the right to hold office. In some countries, persons convicted of electoral fraud, for example, were forbidden to run for office. Furthermore, as the phrase was included in the fifth sentence of that paragraph, it should not be omitted from the final one.

45. Since, as Mrs. Chanet had rightly pointed out, article 25 addressed the political rights of citizens, he agreed that remarks pertaining to the acquisition of nationality should be deleted.

46. Mr. BRUNI CELLI said he wished to reiterate that he had cited historical and sociological reasons for the distinction drawn between citizenship by birth and citizenship by naturalization; he had not discussed that problem in terms of public opinion. In fact, however, the countries that did not establish that distinction were few and far between. Even access to the presidency of the United States, probably the most open country in the world, was limited by considerations of that kind. His concern was that the inclusion of that idea would significantly limit the comment by placing constraints on those countries whose legislation established such a distinction. A general comment, after all, was simply advice that the Committee offered to States.

47. He agreed with the Chairman with regard to the rewording of the final sentence of paragraph 3 (b). However, a proviso should perhaps be attached to the notion of "conviction for serious offences". The history of Brazil would illustrate his point: after a coup d'état by the military the entire political sector had had its civil rights suspended and been prevented from voting and from holding office. In Venezuela, to cite another example, the Constitution had been amended to prevent a former dictator from running for re-election. Similar cases had occurred in Guatemala and Haiti.

48. Mr. LALLAH agreed that the second clause of paragraph 3, second sentence, should be omitted; that sentence could perhaps be linked to the following one. He shared the view expressed by Ms. Medina Quiroga that distinctions between citizenship by birth and by naturalization probably ran counter to the terms of the Covenant.

49. Although Mr. Buergenthal's suggested insertion of the words "in principle" in paragraph 3, fourth sentence, was a good one, it might be preferable simply to eliminate the sentence so as to avoid introducing that problematic aspect of the issue. The gist of the final sentence of paragraph 3 seemed appropriate; the wording might call for some revision.

50. With reference to paragraph 3 (b), he noted that occasions arose in which members of a political party attempted to use the parliamentary process to disqualify their opponents. As a judge, he had been involved the previous year in foiling one such attempt. But what would occur if those persons had no recourse to the courts? Paragraph 3 (b), second sentence, should therefore read: "... objective and reasonable criteria where provided by law".

51. With regard to the final sentence of paragraph 3 (b), he reminded the Committee that in some countries even a civil conviction could entail the deprivation of rights. The Committee should consider the question of whether the offence committed bore any relationship to the right to vote or to hold office. On the other hand, those who committed electoral offences, such as impersonation, corruption, fraud or the buying of votes, should presumably be denied the specific right to participate in the political process. Furthermore, exclusion on specific grounds should be precisely defined by a law. Further to Mr. Mavrommatis' remarks on paragraph 3 (b), he pointed out that under the suggested revised wording of the sentence concerned, an individual could be fined and then deprived of his civil rights, a much graver punishment. If such situations emerged, the Committee would perhaps find that it preferred the phrase "period of detention".

52. Mr. ANDO said that he was in favour of amending the second sentence of paragraph 3 along the lines suggested.

53. With regard to the question of distinctions between those entitled to citizenship by birth or descent and those who acquired it by naturalization, he was inclined to agree with Mr. Buergenthal's suggestion to begin the fourth sentence of paragraph 3 with the words "in principle", since some restrictions might not be unreasonable. The Committee should not be too categorical on that point.

54. He suggested amending the word "no-one" at the beginning of paragraph 3 (b) to read "no citizen".

55. With regard to the distinction between deprivation, exclusion and suspension, he was in favour of adding a further example regarding suspension to make the meaning clearer.

56. Mr. KRETZMER said that the term "unreasonable restrictions" in article 25 referred to three different cases: the right to vote, the right to take part in the conduct of public affairs and the right to have access to public service. Where distinctions existed, they did not usually affect the right to vote but, rather, the right to hold office. Although he agreed with Ms. Medina Quiroga on the need to pursue high standards, especially with regard to the right to vote, he could understand the reluctance to set standards that might be even higher than those implied by the notion of "unreasonable restrictions".

57. With regard to Mr. Buergenthal's suggestion, he suggested going still further and saying: "Distinctions between citizens based on the manner of acquiring citizenship, for example by birth or descent or through naturalization, are not compatible with article 25".

58. He agreed with Mr. Ando's suggestion to amend "no-one" in paragraph 3 (b) to read "no citizen".

59. He suggested amending the end of the last sentence of paragraph 3 (b) to read: "... the period of deprivation should not exceed the period of the sentence or any other reasonable period determined by law".

60. Mr. KLEIN expressed support for Ms. Medina Quiroga's proposal to include a reference to the suspension of rights.

61. With regard to the last sentence of paragraph 3 (b), "period of detention" and "period of sentence" were two separate concepts with different implications, for example where a prisoner was released on parole or probation. Moreover, the presumption of innocence would be violated if the period prior to the final judgement were included in the calculation.

62. Mr. BÁN said that the Committee seemed to be extending the scope of the last sentence in paragraph 3 (b) to cover restrictions on the right to participate in public affairs. In some countries, including his own, such restrictions were sometimes imposed, but they only came into effect after the prison sentence had been served. The wording of the sentence would therefore have to be amended to provide for such cases.

63. Mr. PRADO VALLEJO, referring to Mr. Bruni Celli's observations on precedents in Latin America, said that deprivation of the right to participate in public affairs could occur not only under dictatorships but also under democratic regimes. In Ecuador, for example, there was a provision in the Constitution that allowed ministers suspected of an offence or of some other form of misconduct to be called to account before Congress in what amounted to a political trial. Ministers found guilty were denied the possibility of holding office for as long as the Government of which they were a member remained in power. He understood that a similar provision had been included in Colombia's most recent Constitution. Those situations would have to be borne in mind when establishing a criterion that was consonant with article 25 of the Covenant.

64. It was essential to draw a clear distinction between citizenship and nationality. In Ecuador, citizens were persons who had attained full legal age and who could read and write. A person who was not a citizen could not hold public office. Nationality was an entirely different concept. At all events, the particular conditions in which citizens could be denied the possibility of running for election should be specified.

65. Ms. MEDINA QUIROGA suggested that the whole general comment should be structured on the basis of subparagraphs (a), (b) and (c) of article 25.

66. Mr. BUERGENTHAL proposed omitting the last sentence of paragraph 3 (b).

67. Ms. EVATT said that she would review points of consensus on paragraphs 3 and 3 (b) and on that basis prepare a new version for circulation and comment.

68. The second sentence of paragraph 3 should ask States to outline in a general way how citizenship was defined in the context of article 25.

69. The beginning of the third sentence of that paragraph would be amended to read: "No distinctions are permitted between citizens in the enjoyment of these rights."

70. Important principles were at stake in the following sentence concerning distinctions in the manner of acquisition of citizenship. It might be sufficient to add the words "in principle" at that introductory point and address more specific aspects in the section on voting.

71. Mr. Lallah had agreed with the substance of the last sentence but had wished it to be redrafted. She hoped he would assist her in the task.

72. Turning to paragraph 3 (b), she noted that the wording "no citizen" was preferable to "no-one". The really important point, however, was to make it clear that the deprivations, exclusions or suspensions should not be arbitrary but based on legal, reasonable and objective grounds.

73. Rather than deleting the final sentence, she suggested moving it to the section on voting, where it could be re-examined.

74. Ms. MEDINA QUIROGA said that, if the question of distinctions in the manner of acquisition of citizenship was going to be taken up in the section on voting, she would prefer to omit the words "in principle" in the introductory section.

75. Ms. EVATT suggested putting them in square brackets for the time being.

76. Mr. LALLAH said that the last sentence of paragraph 3 (b) was of relevance not only to voting but also to being elected. In many States, for example, bankrupts were prevented from holding public office although they were not guilty of a criminal offence.

77. He understood subparagraph (c) of article 25 as referring to access not only to elective office but also to the civil service. Such distinctions might need to be considered in a later section.

78. Mr. BRUNI CELLI said that no reference had been made anywhere in the draft to a question that he viewed as essential: the safeguarding of electoral processes and the classification of electoral offences, which could in some cases carry the penalty of suspension of rights. Should the question be addressed in paragraph 3 (b)?

79. Ms. EVATT agreed that that was an important point but thought that it should be left to a later section.

80. She then invited members to turn their attention to paragraph 6 of the draft general comment, which sought to establish the principle of accountability for the exercise of public office by the freely chosen representatives of the people. While not every holder of public office was directly accountable, there was a chain of accountability through the elected representatives who appointed office holders. The paragraph also emphasized the equality of citizens in contributing to that process.

81. Mr. BRUNI CELLI said that the principle stated in the last sentence, while theoretically acceptable, was open to serious abuse in practice. For example, the citizens of Cuba, according to official propaganda, still supported the regime. Carefully staged public demonstrations were invoked as evidence of support in many totalitarian States.

82. Mr. KLEIN said that, while he agreed with the substance of paragraph 6, he had some doubts regarding its implications. Since the rights proclaimed in article 25 could also be invoked under the Optional Protocol, individuals might claim that elected representatives were not exercising the powers conferred on them by the Constitution. Something of the kind had happened in Germany when an individual had brought a case before the Federal Constitutional Court alleging that the Maastricht Treaty establishing the European Union had transferred too many powers from the German Federal Assembly to the institutions of the European Union.

83. Mr. BÁN said that he was baffled by the second sentence. What was the idea it intended to convey: that all votes were of equal weight or that, for instance, a prime minister was entitled to exercise more power than a mayor only to the extent laid down in article 25?

84. With regard to Mr. Klein's doubts, he thought that the answer might lie in the last sentence of paragraph 4, which stated that the allocation of powers should be determined by constitutional or other laws. He did not think that the wording of the paragraph would encourage individual complaints of the kind mentioned.

85. Ms. MEDINA QUIROGA said that she strongly supported Mr. Bruni Celli's reservations regarding the last sentence in paragraph 6. She felt that it should be deleted.

86. With regard to the penultimate sentence, she pointed out that the term used for "public office holders" in the Spanish version did not accurately convey the meaning of the English term.

87. Mr. LALLAH said that, while he was very supportive of the message conveyed in paragraph 6, he wondered whether it might not exceed the scope of article 25. The article made no mention of democracy or accountability and was quite neutral regarding the power structure within which the rights it proclaimed were exercised. To take the case mentioned by Mr. Klein, he

asked whether the Human Rights Committee would be entitled to consider a communication of that kind under article 25 and take it upon itself to decide whether real power had been transferred by Germany to some other entity to the detriment of its citizens.

88. Mr. EL SHAFEI said that he had difficulty with the second sentence of paragraph 6 on two counts. Firstly, the remark that "no citizen can exercise greater power than others in the conduct of public affairs" made nonsense of the principles of representation and the delegation of authority; secondly, the reference to "the principles of article 25" threw no light whatsoever on that contradiction.

89. Further, he agreed with earlier speakers that the final sentence of the paragraph could lead the Committee into dangerous waters.

90. Mr. PRADO VALLEJO said that, for him, the first sentence of the paragraph was quite acceptable and, moreover, the only one that should be retained; the others begged too many questions and posed a number of problems. Thus, the second, third and fourth sentences ignored the realities and logic of hierarchies of authority and the division of power, and might even be construed as interference in the ordering of States' internal affairs; moreover, as had already been pointed out, the final sentence could have the effect of comforting dictators.

91. Mr. BUERGENTHAL said that he was generally, if somewhat less radically, in agreement with the previous speaker, his own view being that the second sentence could be deleted, for the reasons given by Mr. El Shafei and Mr. Bán; that the insertion of "Hence, ..." at the beginning of the third sentence would establish a useful link with the first sentence; and that the final sentence, which might open doors that were best left closed, should be deleted.

92. Ms. MEDINA QUIROGA submitted that the main thrust of the paragraph lay in two perfectly valid directions compatible with article 25: firstly towards the establishment of accountability as an inherent component of the representative function; and, secondly, towards the strict limitation of delegated powers to those laid down in the relevant mandate.

93. That being said, she was a little dubious as to the wisdom of adopting a general comment, designed for the widest circulation, that appeared to be centred on a single system of government, namely the parliamentary system. But perhaps some redrafting would alleviate that concern.

94. Mr. FRANCIS concurred with other speakers that the final sentence of paragraph 6 ought not to be retained, but did not share the objections or uncertainties voiced with regard to other parts of the text, which - subject perhaps to some redrafting for greater clarity - he found coherent, reasonable and acceptable.

95. Mr. ANDO, relating the contents of paragraph 6 to those of the two preceding paragraphs, agreed that the concern with accountability was

perfectly admissible in relation to indirect participation in public affairs. As already pointed out, limitation in the matter of delegated powers was another valid concern. But the Committee must take care not to be seen as interfering in the structuring of State administrations, including the appointment and dismissal of public officials.

96. Unlike other speakers, he considered that the final sentence, which essentially addressed constitutional monarchies or other types of non-elective arrangements such as that obtaining in his own country, should be retained as a meaningful albeit limited facet of the Committee's concern with democracy and government by the governed. Perhaps the sentence could be withdrawn from the paragraph, placed within square brackets and re-examined in the context of the draft general comment as a whole.

97. Mr. BHAGWATI said that, with its emphasis on the link between accountability and representation, the first sentence of paragraph 6 was quite acceptable. He was inclined to favour deletion of the second sentence, for the reasons already given. He had no quarrel with the third and fourth sentences. In theory, the final sentence was also acceptable to him, but in view of the misgivings voiced by a number of speakers, he could agree to its deletion.

98. The CHAIRMAN, speaking as a member of the Committee, said that his principal concern was with the allusion to non-accountability in the final sentence of the paragraph. It seemed to him preposterous to suggest that, where the people had opted for and supported a given form of government, even a constitutional monarchy, certain bodies or persons could be "not directly accountable" either to the voters or to the voters' representatives. Nevertheless, he could accept Mr. Ando's suggestion that the sentence should be separated out for further consideration, provided that in the light of the remarks by Mr. Bruni Celli and others concerning dictatorships, it was made perfectly clear that constitutional monarchies were its subject.

99. He agreed that accountability and the delimitation of delegated authority were central to the concerns expressed in the paragraph, and thought that some redrafting to bring that out more clearly - especially against the background of the situation in some Latin American countries - would help to emphasize that point.

100. Ms. EVATT, summarizing the discussion, noted that the first and third sentences seemed to find general favour with the Committee. It was intended in the second sentence to draw from the principle of the equality of citizens the inference that the exercise of power - including the greater exercise of power by some than by others - must be in accordance with the allocation or delegation of authority contained in a Constitution or basic body of law that had itself been subject to the approval of the citizens, each voting equally and freely. She would endeavour to redraft the sentence to make that point more explicit. She added that she understood the term "freely chosen representatives" in article 25 (a) of the Covenant to cover persons elected to executive and legislative functions and bodies, and to include Presidents of States as well as members of parliament; that point, too, might be brought out more clearly.

101. Following on what she had just said, it should be understood that in the fourth sentence, the reference was to the power exercised by both legislative and executive office holders and to the fact that such power must be exercised in accordance with the Constitution and other laws; "public office holders" meant not merely civil servants but also persons holding major public office.

102. The final sentence of paragraph 6 indeed reflected an attempt to take account of constitutional monarchies. In the light of members' misgivings, and unless unambiguous alternative wording could be found, she would not insist that it should be retained.

The meeting rose at 1.05 p.m.